



MEMORANDUM

Project: Lincoln Erosion and Sediment Control **No.**P-05042
Date Prepared: January 30, 2006
From: Scott Schulte, Patti Banks Associates
To: Nicole Fleck-Tooze, City of Lincoln
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J.B. Dixon, Lower Platte South Natural Resource District
Ted Hartsig, Applied Ecological Services
Lincoln Stakeholders, Citizens, and City Staff

Subject: REVIEW OF LINCOLN'S EROSION AND SEDIMENT CONTROL PROGRAM

Patti Banks Associates (PBA) and Applied Ecological Services have evaluated Lincoln's Erosion and Sediment Control (ESC) Program for Compliance with Section 402 of the Federal Clean Water Act and Nebraska Title 119, and for general efficiency and effectiveness. Since August 2005 PBA and AES have:

- Reviewed Lincoln ESC ordinances and reference materials
- Interviewed City and Lower Platte South Natural Resource District staff
- Met with the Nebraska Department of Environmental Quality
- Conducted workshops with developers, builders, consultants, and neighborhood associations
- Researched regional ESC programs, compliance, and enforcement actions

This review has revealed shortcomings in Lincoln's ESC program that expose the City, the development industry, and the public to legal and financial liability and environmental damage. Specific findings include the following:

1. Since July 2004 the U.S. Environmental Protection Agency (EPA) Region 7 has levied \$425,000 in administrative civil fines against developers and builders. Of this amount, \$30,000 was assessed in Omaha and over \$300,000 in civil penalties is pending, including individual fines in excess of \$100,000. NDEQ informed the City that EPA would soon conduct inspections in Lincoln; similar fines should be anticipated unless Lincoln demonstrates a consistent, enforceable, and effective ESC program.
2. Lincoln has ESC requirements in its ordinances and conducts enforcement to the best of its ability. However, the Lincoln Municipal Code addresses ESC requirements in 11 separate sections that are unclear and difficult to follow and do not comply with the City's National Pollutant Discharge Elimination System permit. Enforcement measures are not standardized and enforcement is inconsistent and time consuming. NDEQ refuses to endorse Lincoln's ESC program for these reasons.
3. A broad consensus exists among City and NRD staff, builders, development consultants, and many developers that Lincoln's ordinances are unclear and that existing ESC measures and enforcement are inadequate. City staff and stakeholders cited numerous examples of failed ESC practices.
4. EPA and NDEQ plan to audit Lincoln's municipal ESC program. It is possible that EPA will fine the City since NDEQ considers Lincoln's program inadequate. In addition, EPA could issue a consent order dictating steps that Lincoln must take to comply with state and Federal law.
5. Homeowners associations and the City have paid hundreds of thousands of dollars to dredge lakes and reservoirs caused by upstream construction land disturbances. The City spends hundreds of thousands of dollars each year removing construction sediment from storm drains and sewers, streets, and parks.

PBA and AES conclude that a streamlined City ESC ordinance which standardizes the requirements and codifies existing enforcement measures will make Lincoln's program more efficient, decrease down time for developers and builders, and reduce the City and developers' exposure to legal action and fines. The consultant team will provide recommendations to improve the program.